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Attorneys for Plaintiffs, District Council 16  
Northern California Health and Welfare Trust Fund, et al.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA HEALTH AND WELFARE  
TRUST FUND; and its JOINT BOARD OF  
TRUSTEES; CHRIS CHRISTOPHERSEN and  
JOHN MAGGIORE, Trustees;

BAY AREA PAINTERS AND TAPERS  
PENSION TRUST FUND, and its JOINT BOARD  
OF TRUSTEES; CHRIS CHRISTOPHERSEN  
and JEANNIE SIMPELO, Trustees;

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA JOURNEYMAN AND  
APPRENTICE TRAINING TRUST FUND, and its  
JOINT BOARD OF TRUSTEES; CHRIS  
CHRISTOPHERSEN and JEANNIE SIMPELO,  
Trustees;

DISTRICT COUNCIL 16 OF THE  
INTERNATIONAL UNION OF PAINTERS AND  
ALLIED TRADES,

Plaintiffs,

v.

USAL PAINTING, LLC., a Suspended California  
limited liability company; and ALEXANDER  
ERNESTO NAVARRO, an individual and also dba  
ALEXANDER ERNESTO NAVARRO,

Case No.

**COMPLAINT**

Defendants.

### Parties

1. The District Council 16 Northern California Health and Welfare Trust Fund (“Health Fund”); Bay Area Painters and Tapers Pension Trust Fund, including the Bay Area Painters and Tapers Pension Trust Fund Annuity Plan (together “Pension Funds”); and District Council 16 Northern California Journeyman and Apprentice Training Trust Fund (“Apprentice Fund”) are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(3), 29 U.S.C. § 1002(3). The Joint Board of Trustees (“Trustees”) of said Funds are the named fiduciaries of the Funds under ERISA § 302(a), 29 U.S.C. § 1002(a). Chris Christophersen and John Maggiore are Trustees, and fiduciaries, of the Health Fund. Chris Christophersen and Jeannie Simpelo are Trustees, and fiduciaries, of the Pension Fund and Apprentice Fund. The Health Fund, Pension Funds, Apprentice Fund, and their respective Trustees and fiduciaries are collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”

2. District Council No. 16 of the International Union of Painters and Allied Trades (“Union”) is a labor organization as defined in § 2(5) of the National Labor Relations Act (“NLRA”), 29 U.S.C. § 152(5) and is represented by counsel herein for the limited purpose of collecting union dues owing as part of the subject contribution claims of ERISA Plaintiffs, and not for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action on its own behalf.

3. Usal Painting, LLC., a Suspended California limited liability company and Alexander Ernesto Navarro, an individual and dba Alexander Ernesto Navarro (“Defendants”), are employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

### Jurisdiction

4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

5. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management

1 Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and  
2 conditions of valid Bargaining Agreements.

3 6. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,  
4 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they  
5 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted  
6 herein, each of which has a substantial ground in federal jurisdiction.

#### 7 Venue

8 7. Venue is conferred upon this Court by § 502, 29 U.S.C. § 1132. Where an action is  
9 brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs’  
10 discretion, in the district where the plan is administered, where the breach took place, or where a  
11 defendant resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this district at  
12 their principal place of business in Dublin, California. Thus, jurisdiction and venue are properly  
13 grounded with this Court.

14 8. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C. §  
15 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business  
16 in this district, its duly authorized officers or agents are engaged in representing employee members in  
17 this district, and the claims arise in this district.

#### 18 Intradistrict Assignment

19 9. The basis for assignment of this action to this Court’s Oakland Division is that all of the  
20 events and omissions giving rise to Plaintiffs’ claims occurred in the County of Alameda, where ERISA  
21 Plaintiffs’ Funds and the Bargained Plans are administered, and where Defendants therefore failed to  
22 fulfill its statutory and contractual obligations to Plaintiffs.

#### 23 Bargaining Agreements

24 10. Defendant Alexander Ernesto Navarro entered into the Northern California Painters  
25 Master Agreement (“Bargaining Agreement”) between the Union and Northern California Painting and  
26 Finishing Contractors Association on behalf of Defendant Usal Painting, LLC. The Bargaining  
27 Agreement requires employer contributions to Plaintiffs’ ERISA Funds, to the Union for union dues,  
28 and to the other plans more fully described in the Bargaining Agreement. Plaintiffs are third party

beneficiaries of the Bargaining Agreement. Individual Defendant Alexander Ernesto Navarro executed the Agreement of Employers Regarding Bay Area Painters and Tapers Trust Funds on behalf of Defendant Usal Painting, LLC which provides that the person signing on behalf of the employer is personally and individually liable for the employer's contributions as required by the Bargaining Agreement. Plaintiffs are informed and believe that Usal Painting, LLC and Alexander Ernesto Navarro are a single employer.

11. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to collect monies due by Defendants to the following plans: the IUPAT Finishing Trades Institute, the IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Industry Fund, the Skills, Safety, Supervisor & Survival Training Awards Recognition (STAR) Program, Inc., the Vacation/Holiday Fund, and the IUPAT Political Action Together-Political Committee (collectively referred to herein as the "Bargained Plans").

12. Under the Bargaining Agreements and the governing documents of ERISA Plaintiffs (the "Trust Agreements"), which are incorporated into the Bargaining Agreements and made binding on Defendants, Defendants are required to regularly pay to ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the amounts of which are determined by the hours worked by Defendants' employees. Contributions are due on the fifteenth (15<sup>th</sup>) day of the month following the month hours were worked, and considered delinquent if not received by the last day of that month. Defendants are also required, pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the Trustees from the day contributions become delinquent, which is the first (1<sup>st</sup>) day of the month following the month in which payment was due, until paid.

13. The Bargaining Agreements further require Defendants to maintain time records or time cards, and to submit any and all relevant records to Plaintiffs for examination to determine whether Defendants are making full and prompt payment of all sums required to be paid by it to Plaintiffs. Should an audit of Defendants' records reveal Defendants have failed to provide full and prompt

1 payment of all sums due, Defendants must reimburse Plaintiffs for the amounts due, including audit  
2 fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

### 3 Factual Allegations

4 14. Defendants have failed and refused to report and pay contributions for hours worked by  
5 their employees during the months of April 2018 through July 2019.

6 15. Plaintiffs are also entitled to recover any and all contributions, and all liquidated damages  
7 and interest on delinquent contributions, found due on timecards, audit, or otherwise including estimated  
8 contributions for months Defendants failed to report to Plaintiffs, through the time of Judgment.  
9 Plaintiffs reserve the right to conduct an audit to determine whether there are any additional amounts  
10 due from Defendants.

### 11 **FIRST CAUSE OF ACTION** 12 **For Submission of Reports and Payment of Delinquent Contributions, Interest, Liquidated** **Damages, Attorneys' Fees and Costs Against Defendants**

13 16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

14 17. Defendants have a contractual duty to timely report and pay the required contributions to  
15 Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining  
16 Agreements and Trust Agreements. Defendants also have a contractual duty under the Bargaining  
17 Agreements, and Trust Agreements incorporated therein, to permit an audit of its records to determine  
18 whether it is making full and prompt payment of all sums required to be paid by it to Plaintiffs, and to  
19 pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

20 18. In addition, Defendants have a statutory duty to timely make the required payments to  
21 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

22 19. By failing to make the required submission of reports and payments to Plaintiffs,  
23 Defendants breached the Bargaining Agreement and is in violation of ERISA § 515, 29 U.S.C. § 1145,  
24 and LMRA § 301(a).

25 20. Defendants' failure and refusal to pay the required contributions was at all times, and still  
26 is, willful. Defendants continue to breach the Bargaining Agreement, and incorporated Trust  
27 Agreements, by failing to report and pay all amounts owed as alleged. Said refusal is unjustified and  
28 done with knowledge and intent.

21. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained from continuing to refuse to perform as required thereunder.

22. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendants. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

#### Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendants as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all unpaid contributions at the rates set in accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132 (g)(2)(B).

1           2.       Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in  
2 accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance  
3 with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all  
4 Plaintiffs.

5           3.       For an order,

6                   (a)     requiring that Defendants comply with their obligations to Plaintiffs under the  
7 terms of the Bargaining Agreement and the Trust Agreements;

8                   (b)     enjoining Defendants from violating the terms of those documents and of ERISA;  
9 and;

10                  (c)     enjoining Defendants from disposing of any assets until said terms have been  
11 complied with, and from continuation or operating of Defendants' business until said terms have been  
12 complied with.

13           4.       That the Court retain jurisdiction of this case pending compliance with its orders.

14           5.       For such other and further relief as the Court may deem just and proper.

15  
16 DATED: August 16, 2019

SALTZMAN & JOHNSON LAW CORPORATION

17  
18 By: \_\_\_\_\_/S/

19 Luz E. Mendoza  
20 Attorneys for Plaintiffs, District Council 16 Northern  
21 California Health and Welfare Trust Fund, et al.  
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